

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, November 15, 2000, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Russ Bayer, Jon Carlson, Steve Duvall, Gerry Krieser, Patte Newman, Tommy Taylor, Greg Schwinn and Cecil Steward (Linda Hunter absent); Kathleen Sellman, Ray Hill, Ed Zimmer, Jason Reynolds, Ching-Yun Liang, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair, Russ Bayer, called the meeting to order and requested a motion to approve the minutes of the regular meeting held November 1, 2000. Motion to approve made by Newman, seconded by Schwinn and carried 7-0: Bayer, Carlson, Krieser, Newman, Schwinn, Steward and Taylor voting 'yes'; Duvall abstaining; Hunter absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

November 15, 2000

Members present: Bayer, Carlson, Duvall, Krieser, Newman, Taylor, Schwinn and Steward; Hunter absent.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 3289; SPECIAL PERMIT NO. 1875; SPECIAL PERMIT NO. 1885; FINAL PLAT NO. 99053, NORTHERN LIGHTS 8TH ADDITION; AND FINAL PLAT NO. 00034, SOUTH STREET BUSINESS PARK ADDITION.**

Nothing was removed from the Consent Agenda.

Newman moved to approve the Consent Agenda, seconded by Schwinn and carried 8-0: Bayer, Carlson, Duvall, Krieser, Newman, Taylor, Schwinn and Steward voting 'yes'; Hunter absent.

Note: This is final action on Special Permit No. 1875; Special Permit No. 1885; Northern Lights 8th Addition Final Plat No. 99053; and South Street Business Park Addition Final

Plat No. 00034, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

SPECIAL PERMIT NO. 1878
FOR A PERSONAL WIRELESS FACILITY
ON PROPERTY GENERALLY LOCATED
AT SOUTH 16TH STREET AND WINDHOEK DRIVE.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

November 15, 2000

Members present: Taylor, Krieser, Schwinn, Carlson, Duvall, Newman, Steward and Bayer; Hunter absent.

Planning staff recommendation: Deferral.

Proponents

1. Jill Bazzell of Qwest Wireless presented this application to construct a 108' monopole at 16th & Windhoek, where there is currently a garage storage facility. They will be taking one of the garages out and replacing it with the monopole and equipment. The I-2 zoning is a limited preference site because there are three other towers in the general area. The staff is recommending deferral, asking the applicant to address this issue of the other towers including collocation information and additional renderings.

The new renderings as requested by staff were submitted by Bazzell, as well as a copy of the collocation statement signed by Qwest and Concord Enterprises, which was faxed to the Planning Department on October 23rd.

With regard to the three other towers in the area, Bazzell advised that one is located at 5000 So. 14th and is owned by the State Patrol; another is located at 5001 So. 14th and is owned by the State of Nebraska. Qwest has been told that private ventures are not allowed on these towers at these sites. The third tower is located at 5400 So. 16th and is owned by Time Warner. Bazzell explained the status of Qwest's attempted lease negotiations with Time Warner. Qwest has worked with Time Warner for over a year on lease issues and they are unable to come to a mutually acceptable lease agreement. There are eight issues that are unresolved, including 1) interference issues--Time Warner is not willing to protect Qwest in the event of interference by a future carrier; 2) Qwest would be locked into the lease for 5 years and could not get out of it if there were interference problems by another carrier; 3) indemnity and hold harmless issues with

regard to damaged equipment; and 4) the operation of law statement—Time Warner will not allow Qwest to assign or sublet the lease in the event of a merger. Bazzell does not believe a two-week deferral is going to resolve any of the issues with Time Warner on this location. Therefore, Bazzell requested that the Commission approve the application with the conditions as set forth in the staff report.

Carlson inquired about Time Warner claiming that they have not received any word from Qwest on the redraft of the lease. Bazzell referred to the fax dated 9/08/00 in the items she distributed which states that the agreement cannot be signed, even with the revisions. She does not know why Time Warner would still be reserving space or say they have not heard from Qwest.

There was no testimony in opposition.

Steward inquired of the City Law Department as to what authority the City has to call both Time Warner and the State to ask them to explain why they will not cooperate in collocation. Rick Peo of the Law Department stated that the city may not have any authority to require anything of non-parties which are not involved in an application before the City. It is the applicant's responsibility to show by good evidence that they have made reasonable efforts to collocate on the existing facilities. If we feel the applicant has not provided that information, the Planning Commission has the right to deny the application. Peo had not reviewed the lease agreement and was not familiar with the terms. Typically, negotiations go back and forth more than once. A typical response would be continue to negotiate. But there gets to be a point of no return where the parties decide they cannot reach a mutual agreement and we need to abide by that decision if it appears reasonable.

Steward suggested that this puts the city in the position of being a victim of the determination of the first locator, and some of these towers were installed a) before the city had a policy, and b) before anyone really understood the propagation of the technology that was going to take place. It seems that we're somewhat at a loss when we get a stone walling reaction that is just going to propagate more towers within a neighborhood vicinity and we're helpless to do anything about it. He wonders if it really is only the applicant's responsibility? Peo believes that it is. There is an economic motive for the tower owner to have a collocator. He believes that typically there would be a point of reasonable negotiations. We just don't have enough of a track record to know how this might work. Steward believes that this is the first time we have had any potential conversation with the state and it would be nice to know whether or not we could arrive at a general agreement rather than this flat out "no". Peo assumes the city would attempt to work with the state to find out their concerns. One of the reasons the staff is recommending a deferral is because of the short notice that the negotiations had terminated between the parties, and we don't know that those were reasonable conditions to call off the negotiations.

Carlson wanted to know the city's opportunity to demand collocation. Peo advised that the ordinance does say that new towers shall be made to be collocated upon, but having created the opportunity, we don't know to what extent the city has authority to require it totally. The conditions of approval state that the original tower permittee will provide collocation under reasonable standards. There has to be some reasonableness of the minds between the parties. Peo believes the standard is trying to incorporate reasonableness because it costs more to build a pole that can collocated upon and hopefully they will work together to reach a reasonable solution. He does not know that we have any substance to mandate collocation.

Carlson observed then that we need to determine whether the negotiations were reasonable. Peo commented that the information we had coming into this hearing was that they had made suggestions, part of which had been granted, and they stopped and there were no further negotiations. Qwest has indicated that they cannot accept what was counter-proposed but the staff does not have information that they made a counteroffer. We are just asking for another step to see if there is any further possibility for negotiation to facilitate collocation.

Response by the Applicant

Bazzell advised that the pole will be structurally sound for up to two carriers. Qwest is leasing the garage space. This is a more expensive build for them and Qwest would much rather collocate. Bazzell believes Qwest has shown a good faith effort. They have been attempting to negotiate this lease with Time Warner for over a year. The information she submitted was the last effort.

With regard to the state, Bazzell advised that they did have a pre-application meeting with the staff. If there was some contact with the state that should have been made, Qwest believes it should have been done at that time rather than wait until now at the public hearing.

Bayer asked how many of the Qwest sites are collocations today. Bazzell did not have that information but they have done several collocations which are done administratively. It is more incentive because it is less costly.

Steward understands the desire to move this forward, but the applicant was aware of the staff recommendation and should be prepared for another two-week delay. Due to the Veterans Day holiday and Jennifer Dam being out of town, Bazzell only found out about the staff recommendation last Thursday night and she just got the staff reports this morning. She only had today to review the issues and come in and make a presentation. She believes the application should be acted upon today.

Schwinn noted some underlying themes in the negotiations. If the Commission grants approval to this application today, he wondered whether the applicant believes Time Warner will change their stance with the ability for Qwest to collocate. Bazzell stated that if they did, she believes Qwest would go back and entertain that.

Carlson moved to defer, seconded by Steward.

Carlson stated that he is definitely not interested in trying to force Qwest into a rental agreement that would put an undue burden upon them at all. He wanted to give some indication that he would be sympathetic to the application if Time Warner were listening, but he would be more sympathetic to a reasonable lease that would allow collocation. He desires to defer this application because the Commission received a lot of new information at the public hearing that he wants to have an opportunity to review and he wants the staff to also have that opportunity. He indicated that he will be sympathetic if they cannot find a reasonable accommodation.

Steward agreed with Carlson, but he is more broadly concerned with the process. We are still breaking new ground in this area of regulation for the City. He believes that all parties involved have some responsibility for the civic improvement through this technology. There is absolutely no intent on his part to penalize Qwest. Of all the providers, they have been more diligent and more due process oriented and their product is better designed, in his personal opinion. The principle is that with the staff recommendation of deferral, it gives the Commission the notion that complete information was not available at the time the staff made their recommendation. Steward believes there is still opportunity for collocation and if it is not possible in two weeks, he will approve this request.

Duvall disagreed with deferral. He believes the applicant has made a good faith effort with Time Warner and they have come to impasse after repeated attempts.

Schwinn agreed with all comments, but he will vote against deferral because he believes the applicant has made every good effort that can be made. Time Warner needs to become a better corporate citizen.

Bayer stated that he will vote against deferral based on the date of the letter and the email. He thinks this will kick Time Warner into making a decision and he doesn't believe the state will change their mind in two weeks.

Motion to defer failed 2-6: Carlson and Steward voting 'yes'; Taylor, Krieser, Schwinn, Duvall, Newman and Bayer voting 'no'; Hunter absent.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

November 15, 2000

Schwinn moved approval, with conditions, seconded by Duvall.

Carlson stated that he will vote no for the same reasons he stated that he wanted to defer. With the information in front of him today, he is not satisfied.

Motion for conditional approval carried 7-1: Taylor, Krieser, Schwinn, Duvall, Newman, Steward and Bayer voting 'yes'; Carlson voting 'no'; Hunter absent.

Note: This is final action, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

MISCELLANEOUS NO. 00010

AN AMENDMENT TO THE LINCOLN CENTER

REDEVELOPMENT PLAN TO ESTABLISH THE

"ENTERTAINMENT CENTER/OLD FEDERAL BUILDING

PROJECT AREA".

PUBLIC HEARING BEFORE PLANNING COMMISSION:

November 15, 2000

Members present: Taylor, Krieser, Schwinn, Carlson, Duvall, Newman and Bayer; Steward declaring a conflict of interest; Hunter absent.

Planning staff recommendation: A finding of conformance with the Comprehensive Plan.

Proponents

1. Dallas McGee of the Urban Development Department presented the application. This is an amendment to the Lincoln Center Redevelopment Plan to accommodate two new projects. The "Entertainment Center" is a \$30 million dollar mixed used center, including movie theaters as well as approximately 70,000 sq. ft. of retail uses. The second project is redevelopment of the Old Federal Building on the block between 9th, 10th, "O" and "P". The developer for the Entertainment Center is currently working on the project. The developer of the Old Federal Building will be selected through a public process which has begun, with submittals due December 6th. This project area will enable us to collect TIF generated from these projects, which will be a major funding source for the improvements.

Carlson inquired about the surface parking on Lot 41. McGee advised that there is surface parking there today on the northwest corner of the block adjacent to First Commerce. That surface parking will be removed as part of this project. Carlson inquired whether the generic design is to have the entire block. McGee agreed that it would include the entire block with the exception of Continental and the Sartor Hamann Building.

Carlson asked where the existing public offices will be relocated. McGee indicating that they are currently working with the Public Building Commission to make that determination.

Carlson inquired about ownership of the Old Federal Building. McGee stated that the building is owned by the city. We will need to determine the value of the building and the cost of relocating people. A developer will be selected and that developer will negotiate a redevelopment agreement identifying everything that the city will do and what the private developer will do. Typically, the building is sold and the proceeds may very well be used to provide some public improvements related to the redevelopment of the building, i.e. new sewers, water, access, and streetscape improvements, but that has not yet been determined. Carlson commented that it may not be strictly monetary. In other words, the city could be benefitted by the redevelopment. McGee concurred. Urban Development views this building as being critical to the revitalization of the Marketplace corridor and connecting Haymarket to the Entertainment Center.

Schwinn asked about use of the Old Federal Building. McGee stated that at this point, the city is asking the developer to give their qualifications and experience based on similar projects that they have undertaken. We are not asking them to identify a use at this point but will once we have a short list. It will most likely be a mixed use with some retail and office, and maybe some residential. We don't want to limit it at this point and narrow the field until we see what sort of developer proposals we get.

Carlson inquired whether the Planning Commission and the public will have an opportunity to comment on the proposed development. McGee stated that the Commission would probably not see a change of zone because it is P zoning, but it might be changed to B-4. There will be a redevelopment agreement that identifies all of the specifics. McGee stated that the intent is to have a very public process and the Mayor will establish a selection committee for the developers.

2. Richard Meginnis, FMA Realty, who is currently working with the developer on the Entertainment Center, testified in support. Our job is to be in contact with the five property owners looking to purchase the property in a market way. The other exciting thing about this whole project is the number of calls they have received from retailers that want to locate back into a downtown urban setting. Meginnis is personally excited about this being a great domino effect for the rest of P street and the immediate area for redevelopment of the other buildings.

Duvall asked how many properties have been secured. Meginnis responded, "two so far and the other two are very close". The owners have been very receptive.

Carlson asked whether the proposed theater would be managed locally. Meginnis indicated that it would and therefore, they would not be in competition with existing theaters.

There was no testimony in opposition.

Schwinn inquired about preservation of some of the historical features of the Old Federal Building. Ed Zimmer, Historic Preservation planner, confirmed that those have been identified in the material that has gone to developers. There is an assumption that part of the funding would probably be from the Certified Historic Tax Credit Program which applies to all the features, interior and exterior. If they use historic tax credits they will have to work with those faces and key corridors.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: November 15, 2000

Schwinn moved to find the proposal to be in conformance with the Comprehensive Plan, seconded by Carlson

Carlson is excited and thinks we're moving in the right direction.

Motion carried 7-0: Taylor, Krieser, Schwinn, Carlson, Duvall, Newman and Bayer voting 'yes'; Steward declaring a conflict of interest; Hunter absent.

SPECIAL PERMIT NO. 1882
FOR A GYMNASTICS SCHOOL ON PROPERTY
GENERALLY LOCATED AT SOUTH 40TH STREET
AND PINE LAKE ROAD.

Application was withdrawn by the applicant.

There being no further business, the meeting was adjourned at 1:45 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on November 29, 2000.